

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

KENTUCKY INDUSTRIAL UTILITY	)	
CUSTOMERS, INC.	)	
	)	
COMPLAINANT	)	
	)	
V.	)	CASE NO. 95-145
	)	
BIG RIVERS ELECTRIC CORPORATION AND	)	
HENDERSON UNION ELECTRIC COOPERATIVE	)	
CORPORATION AND GREEN RIVER ELECTRIC	)	
CORPORATION	)	
	)	
DEFENDANTS	)	

O R D E R

On April 5, 1995, Kentucky Industrial Utility Customers ("KIUC") filed on behalf of Alcan Aluminum Corporation ("Alcan") and NSA, Inc. ("NSA") a complaint against Big Rivers Electric Corporation ("Big Rivers"), Henderson Union Electric Cooperative Corporation ("Henderson Union") and Green River Electric Cooperative Corporation ("Green River"). Alcan and NSA operate aluminum smelters and purchase significant quantities of power pursuant to long-term contracts with their respective electric distributors, Henderson-Union and Green River. These electric distributors, in turn, purchase all their electricity pursuant to long-term contracts with Big Rivers.

In August 1987, the Commission established for Alcan and NSA ten year rate tariffs that vary the price of electricity based on the market price of aluminum. The tariffs were designed to provide economic protection to Alcan and NSA due to the cyclical nature of

the aluminum industry. Known as the variable smelter rates, the tariffs were modified as of January 1, 1990, pursuant to a Settlement Agreement among numerous parties including Alcan and NSA, their respective electric distributors, and Big Rivers. The Settlement Agreement, approved by the Commission in Case No. 89-376, modified the tariffs to include a balancing account to ensure that the total of the remaining payments under the variable rate equaled the amount that would have been paid during that time under a non-variable rate of 29.1285 mills per KWH.

The complaint raises various concerns relating to the on-going viability of Big Rivers and its ability, as well as that of Henderson Union and Green River, to comply with the terms of the tariffs as modified. KIUC projects that by early 1996, Alcan and NSA will have prepaid all demand charges due through August 1997, entitling them to receive contract quantities of power from the prepayment date through August 1997 at an energy only rate of 18.1 mills per KWH. As this energy rate was established to recover only fuel and variable operating and maintenance expenses, KIUC opines that Big Rivers may experience significant cash flow problems during this time and may be unable to continue serving Alcan and NSA in accord with the modified tariffs.

In an effort ostensibly aimed at eliminating any potential cash flow problems that might arise in the future, KIUC seeks the establishment of a trust or escrow account into which Alcan and NSA would pay all energy charges in excess of 29.1285 mills per KWH. At such time that Alcan or NSA has prepaid in full all demand

charges, the trustee would be authorized to release the trust funds to Big Rivers ratably through August 1997.

KIUC claims that the relief requested will not cause Alcan or NSA to be in violation of the Settlement Agreement since they are seeking only "interpretation, construction or enforcement of this Settlement Agreement or requesting relief for breach thereof," as authorized by Section 3 of that Agreement.

Based on a review of the complaint and being otherwise sufficiently advised, the Commission finds that pursuant to 807 KAR 5:001, Section 12(4)(a), the complaint must be examined to determine if it states a prima facie case. This examination leads us to Section 2 of the Settlement Agreement which provides, in pertinent part,

It is the intent and agreement of the parties that the Alcan Smelter Rate and NSA Smelter Rate shall remain in effect without modification through August 31, 1997 . . . . Big Rivers, HU, Green River, NSA and Alcan agree that they shall not apply to KPSC for any modification of the Alcan Smelter Rate or NSA Smelter Rate to be effective prior to August 31, 1997 without the express written consent of all the other parties hereto.

Similar language prohibiting any modification is included in the tariffs of Big Rivers, Henderson Union and Green River.

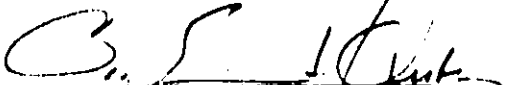
While KIUC characterizes its prayer for relief as one for interpretation, construction, or enforcement of the Settlement Agreement and modified tariffs, it without question seeks to have the Commission modify the most basic requirements as agreed to by the parties - who gets the money and when. This the Commission

cannot do. The Settlement Agreement precludes modification of the tariffs which were appended thereto absent the consent of all parties. KIUC's complaint shows on its face that all parties to the Settlement Agreement have not consented to the relief requested and, therefore, the Commission will decline KIUC's invitation to breach the Settlement Agreement.


IT IS THEREFORE ORDERED that the complaint filed by KIUC on behalf of Alcan and NSA be and it hereby is dismissed without prejudice.

Done at Frankfort, Kentucky, this 13th day of April, 1995.

PUBLIC SERVICE COMMISSION

  
Chairman

  
Vice Chairman

  
Commissioner

ATTEST:

  
Executive Director